IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8677 of 1996

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

G S R T C

Versus

HERIS OF JUVANSINGH T DABHI

Appearance:

1. Special Civil Application No. 8677 of 1996

MR MANISH R BHATT for Petitioner No. 1

..... for Respondent No. 1

UNSERVED-EXPIRED (N) for Respondent No. 1/1

MR DJ BHATT for Respondent No. 1/2

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 20/09/2004

ORAL JUDGEMENT

Heard Mr.Manish R. Bhatt, learned advocate on

behalf of the petitioner Corporation and Mr.D.J.Bhatt, learned advocate for respondent.

By way of present petition, the petitioner Corporation has challenged the award passed by the labour court, Ahmedabad in Reference [LCA] No.1431 of 1983 dated 31st May, 1996, whereby the labour court has granted backwages for the period from the date of dismissal till the date workman expired 22nd September, 1990.

While dealing with present petition, this Court has passed the following two orders on 7th November, 1996 and 18th March, 1997 which are reproduced below;

"Order : date : 7.11.1996 : Notice returnable on 10th December, 1996. Notice as to interim relief. Ad-interim relief in terms of Para-10[B] on the condition that the petitioner corporation shall deposit an amount of Rs.25,000/- [Rupees Twenty Five Thousand only] in the court within a period of four weeks from today"

"Order : date 18.3.1997 : Mr.M.M.Bhatt for M/s M.R.Bhatt & Co. Mr.D.J.Bhatt for respondents.

Rule. It will be open for the respondent Nos.1 & 2 to withdraw the amount of Rs.25,000/- deposited by the petitioner subject to his furnishing a solvent security to the satisfaction of the Registrar of this Court. Respondent No.1/1 has already expired as stated by the learned advocate for both the sides. Direct Service is permitted."

In pursuance of the orders, the petitioner Corporation has deposited Rs.25,000/- in the Registry of this Court. However, learned advocate Mr.Bhatt has submitted that said amount, though permitted by this Court, could not be withdrawn and the same is not withdrawn by the respondent.

Learned advocate Mr.M.R.Bhatt has submitted that misconduct committed by the workman was in respect of dishonesty and misappropriation and that being serious misconduct, punishment of dismissal, is legal and valid. It is further contention of the learned advocate Mr.Manish Bhatt that the workman was not entitled to any sympathy looking to the serious misconduct committed by him. Not only that but in past also, such kind of defaults twenty six in numbers were recorded to have been

committed by the workman and therefore, the Corporation has rightly passed dismissal order. He also emphasised that the labour court has considered only technical plea of the workman and ignored merits of the matter and therefore, the labour court has committed gross error in passing the award in question and erroneously granted full backwages of the interim period without any basis and reasons and hence, the award in question requires to be quashed and set aside.

On the other hand, learned advocate Mr.D.J.Bhatt submits that the labour court has rightly considered the legal aspects of the matter that Depot Manager was not competent authority to impose punishment of dismissal and punishment of dismissal has been passed by the subordinate authority. Therefore, it was without jurisdiction and rightly set aside by the labour court. He submitted that the workman has expired during pendency of Reference proceedings on 23rd September, 1990 and legal heirs were brought on record. It is also stated that wife of the concerned workmen has also expired leaving behind son as heir. Therefore, he submits that this requires to be examined sympathetically in view of the fact that workman concerned has expired and dismissal order was passed by subordinate authority who had no jurisdiction to pass dismissal order. He also submitted that against the said legal aspect, no submissions is made by the Corporation before the labour court and therefore, the labour court has rightly set aside the dismissal order and granted backwages of the interim period. He also submitted that the corporation has not proved gainful employment of the workman concerned for the interim period and therefore also, the labour court has rightly granted the backwages of the interim period. He, however, also submitted that family condition of the respondent workman is such poor and pity that they could not be able to withdraw Rs.25,000/- as per the order of this Court on furnishing satisfactory security. Therefore, his request is, looking to such pity and poor family condition of the respondent workman, apart from entering into merits and legal controversy involved in the matter, present petition may be dismissed taking sympathetic approach in the matter.

I have considered submissions made by the rival sides. I have also gone through the award in question. But the consideration that requires in the facts of the present case that the workman concerned has expired during pendency of Reference proceedings. As per the material came on record, the serious charge of dishonesty and misappropriation levelled against the respondent

workman which is alleged to have been proved as per the stand of the petitioner corporation. But apart from all these legal aspects, the family circumstances of the respondent workman and his heir demand consideration while disposing of the present petition. The glaring aspect of the matter that when the family of the respondent conductor was not able to withdraw Rs.25,000/- on furnishing satisfactory solvent security though this Court has permitted to do so but as per the office endorsement, the family of the respondent could not provide sufficient security. Therefore, an inference could be drawn that condition of the family of the respondent workman is very poor and pity. In such circumstances, observations made by the Apex Court in case of SHANKAR DASS V. UNION OF INDIA AND ANOTHER, AIR 1985 SC 772 are relevant and same are reproduced as under:

> "Cases which evoke sympathy come frequently before the Court. But pity not often. The case before us has a unique story to tell the story of a crime committed under the stress of personal misery compounded by the apathy of the Establishment and the appalling delays of law. Ironically the silver lining is furnished by the bravery of a broken man who has been fighting against injustice for the last 23 years. When justice is done or so that Judges believe the conscience assuaged. But in this case, despite our doing all that can be done for the appellant within the framework of law we have an uneasy conscience. Delay not only defeats justice and robs it of its immediate relevance to the parties but it shakes the very confidence of the people in the desire and ability of law courts to assist them when they need that assistance most."

In light of above observations made by the Apex Court and considering the fact that the workman concerned has expired during the pendency of reference proceedings, so also, his wife has expired leaving behind son as heir and further considering the pitiable family circumstances and taking into account the legal aspect that punishment of dismissal imposed by the subordinate officer not authorised under the Rules, in my opinion, the labour court has not committed error while passing the award. As such, no error found apparently on the face of record and therefore, no interference of this Court is warranted. Moreover, this Court has limited jurisdiction under Article 227 of the Constitution of India while

interfering with the fact finding and conclusion arrived on appreciation of evidence before the trial court. The award impugned in the present petition is not disturbed by this Court and same is upheld by this Court. Therefore, there is no substance in the present petition and the same is rejected accordingly.

Rule discharged with no order as to costs.

Registry is directed to pay an amount of Rs.25,000/- by way of account payee cheque drawn in favour of respondent No.1/2 Bhathibhai Juvansingh Dabhi upon proper verification by his learned advocate Mr.D.J.Bhatt.

Direct Service permitted to respondent.

Date : 20.9.2004 [H.K.Rathod, J.]

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